

for, “a stay of enforcement action by the Central Bank in respect of the directives”. The two directives were issued by the Central Bank under *s: 36 (5) of the Banks and Financial Institutions Act, Cap 263, Laws of Belize*, following a special examination carried out by the Central Bank under *s: 34 (1) (a) of the Act*. The application was made under *s: 76 of the Act*. The power to grant a stay of execution of a decision made by the Central Bank is vested in the chairman of the Banks and Financial Institutions Appeal Board, by *s: 76* in these words:

“76. An appeal to the Board against a decision of the Central Bank shall not have the effect of suspending the execution of such a decision, unless on an inter partes application made to the Chairman of the Appeal Board, the Chairman having heard both sides, is of the opinion that exceptional circumstances exist that warrant the grant of a stay of any further action by the Central Bank”.

3. *The facts*

The short facts leading up to the application by the Belize Bank Ltd. were the following. On 14.3.2008, The Central bank issued the two directives to the Belize Bank Ltd to comply with. On 23.5.2008, the Belize Bank Ltd. appealed to this Appeal Board against the two directives. On 1.8.2008, the Belize Bank Ltd made the application for a stay of the execution of the two directives.

4. The Central Bank opposed the application for a stay of execution. Mr. Sydney Campbell, the Governor of the Central Bank, stated in his affidavit dated 6.8.2008, in answer and opposition to the application of the Belize Bank Ltd, that the examination was carried out as a matter of his decision based on a statement by the Prime Minister that, “the Government of Belize had been given US\$20.0 million not US\$10.0 million, by the Government of Venezuela...”, and on what Mr. Johnson of the Belize Bank Ltd. had told Mr. Campbell in an earlier meeting. Mr. Campbell explained that the two directives were issued by the Central Bank based on the report of the examination carried out at the Belize Bank Ltd. The directives are:

“1. BBL should forthwith credit GOB’s account with the Central Bank of Belize with US\$10.0 million as per “Payment Details” stated on wire transfer instructions sent by Banded – Fideicomisos De Venezuela on the “Cash Payment Confirmation” dated 28 December 2007, and (First Directive)

2. BBL should forthwith provide to the CB, written documentation regarding the authority to deposit funds to the account of UIH regarding the US\$10.0 Million received from the Embassy of the Republic of China (Taiwan)” (Second Directive)”.

5. The Belize Bank Ltd. did not comply with the directives. It considered that the directives were unlawful because they were intended to assist the Government of Belize to collect the sums of money which the Belize Bank Ltd. considered it was entitled to keep because the Government owed the Belize Bank Ltd. some money under a loan agreement between the Government and the Belize Bank Ltd. Whether that claim applied to only the sum received from Venezuela, or also to the two sums received from Taiwan, is not clear.

6. To resist the directives, the Belize Bank Ltd., intended to appeal to this tribunal, the Banks and Financial Institutions Appeal Board, under *s: 70 of the Act*. On the other hand, it considered that the Appeal Board did not provide an impartial tribunal, and so was unconstitutional. It also seemed to prefer arbitration proceedings in London between itself and the Government. However, the Belize Bank Ltd., finally filed what it called, “a without prejudice appeal”, and also filed a constitutional claim No: 338 of 2008, at the Supreme Court for a declaration that the Appeal Board was unconstitutionally appointed, and that was a denial to the Belize Bank Ltd, of the right to, “an independent and impartial court or authority”, guaranteed under *s: 6 (7) of the Constitution of Belize, Cap. 4, Laws of Belize*.

7. The Appeal Board decided to assign Friday 1st and Monday 4th August 2008, for the hearing of the appeal, in the hope that the constitutional question in claim No. SC 338 of 2008 would have been decided at the Supreme Court by those dates. The Supreme Court has delivered its judgment on 1.8.2008; it dismissed the claim that the Appeal Board was not impartial and therefore unconstitutional. The Belize Bank

Ltd., immediately appealed the decision to the Court of Appeal of Belize; the appeal is pending.

8. In the mean time, the Government also filed a claim, No. 228 of 2008, at the Supreme Court, claiming from the Belize Bank Ltd. the monies that it said were not paid into the bank account of the Government. The grounds of the claim were said to include the ground that the payment to, or the taking by the Belize Bank Ltd., of the monies referred to in the two directives, were *unconstitutional* and also unlawful under *the Finance and Audit Act, Cap 15, Laws of Belize*. The claim is said to have been stayed by the Supreme Court pending a determination of a dispute arising out of the loan agreement between the Government and the Belize Bank Ltd. at an arbitration. It is said that the arbitration proceedings are to be conducted in London (UK), according to the agreement.

9. Apart from applying to have enforcement action by the Central Bank stayed until the appeal of the Belize Bank Ltd., to the Appeal Board has been determined, the Belize Bank Ltd., also applied that the Appeal Board stay the Appeal of the Belize Bank Ltd., to the appeal

Board until the arbitration proceedings in London has been concluded, and the appeal of the Belize Bank Ltd., in claim No. 338 of 2008, to the Court of Appeal of Belize has been determined.

10. ***Determination***

Under *s: 76 of the Banks and Financial Institutions Act*, quoted above, a stay can be granted only if there are “*special circumstances that warrant*” it. In other words, the applicant must show some special circumstances of the parties or in the case, that may give rise to serious prejudice or grave or irreversible loss or grave hardship, if a stay is not granted and the appellant should succeed in his appeal. I do not think that a hard and fast rule about what facts make special circumstances is desirable. The several cases cited by both learned counsel are just examples in which special circumstances have been found. It is largely a question of common sense, based on a balance of advantage to the parties. The particular facts of the case are crucial. I consider the discussions in two cases particularly useful. The cases are: *Hobin v Douglas, 30th October 1997, Court of appeal (UK)*, and *R v Executive Council of the Joint Disciplinary Scheme ex parte Hipps 12.6.1996 (UK)*.

11. In the present application, the first consideration is whether there are arguable prospects of the appeal of the Belize Bank Ltd to the Appeal Board succeeding. Secondly, the necessary balance must be carried out of any prejudice that may be occasioned to the Belize Bank Ltd., and on the other hand, the public interest in not having the regulatory action taken by the Central Bank stalled.

12. As regards staying the appeal itself, there is no particular statutory provision in the Act for the Board to stay an appeal. I accept, however, the submission by learned counsel Mr. Marshalleck, for the Belize Bank Ltd, that if the Appeal Board finds a multiplicity of court or tribunal cases or appeals based on one cause, the Appeal Board may stay an appeal. I add however, that the multiplicity of the proceedings must create special circumstances leading to unfairness or hardship in conducting the cases or the appeal. By the same reasoning, a consolidation of several appeals could be ordered.

13. I start my determination with the question as to whether there are special circumstances to warrant a stay of enforcement action by the Central Bank in respect of directive No. 2, which was that: “*BBL*

forthwith provide the Central Bank with written documentation regarding the authority to deposit funds to the account of UIH regarding the US\$10.0 million received from the Embassy of the Republic of China (Taiwan)”.

14. The submission for the Belize Bank Ltd. was that it had already complied with directive No.2, the only documents available were the two cheques; and on each cheque the payee was named as, “Belize Bank”, there were no more documents to provide. Whether that is true or not will be determined at the hearing of the appeal.

15. The Special circumstance which will arise if there is no stay of enforcement of directive No. 2, and the Central Bank insists on more documents, is that the Belize Bank Ltd will fail to produce any. The Central Bank could then have the Belize Bank Ltd. and its official charged with an offence under s: 36 (7). Arrest and conviction could follow, before the appeal to the Appeal Board has been determined. Should the Belize Bank succeed later in its appeal against directive No. 2, the damage due to arrest and conviction would be irreversible. On the other hand, a stay of directive No. 2 will delay the Central

Bank from having and studying the documents requested, if there are such documents, for a short time only. No serious loss or hardship could result to the Central Bank or public interest. The balancing act favours granting a stay of directive No. 2. I would grant a stay of directive No. 2, based on the above special circumstance of hardship that the Belize Bank Ltd., and its official may face if a stay is not granted.

16. About a stay of enforcement action in regard to directive No. 1, it is my respectful view, that the reasons given in the submission for the Belize Bank Ltd. do not, individually or together, create special circumstances that warrant a stay.

17. The reason given in the affidavit of Mr. Michael Coye of the Belize Bank Ltd, that, “the Government of Belize is heavily indebted...”and will not be able to pay back the US\$10.0 million should the Belize Bank succeed in the arbitration or in claim 228/2008, or in the appeal in claim No. 338 of 2008 is, with due respect to Mr. Coye, scandalous. The article published in the Financial Times (presumably in the UK) exhibited, is certainly not the stuff that any court or tribunal will take

without more, for evidence. The publication by the Government, entitled, "Government of Belize Economic and Financial Update, October 2007", also exhibited, may show a serious debt situation, but it does not prove any current failure by the Government to pay its debt and meet other obligations. Moreover, it is in evidence that the Belize Bank Ltd. lent a huge sum of money to the Government, and that was despite the scandalous statement by Mr. Coye. It is not peculiar to the Government of Belize that public debt may be a strain on public funds; even governments of countries that are regarded as very rich often come up with budgets that show deficit. It is no proof of not being able to meet their obligation.

18. About damage to the reputation of the Belize Bank Ltd., I do not consider that by paying the US\$10.0 million on the instruction of the Central Bank, the statutory regulatory body, the reputation of the Belize Bank Ltd., will be harmed. I wonder whether resisting to pay is not already doing the damage.

19. It was a common fact that the solvency of the Belize Bank Ltd. is not in doubt and not in question. So, there will be no irreparable

financial harm to the Belize Bank Ltd, should it pay over US\$10.0 million into the account of the Government. In any case, should the Belize Bank Ltd., be successful in its appeal, the Government will have to pay back, to the Belize Bank Ltd., the US\$10.0 million.

20. The reason that was much stressed to be a special circumstance was that there was a multiplicity of claims based on the suggested underlying reason for directive No. 1, namely, that the Government owes the Belize Bank Ltd. on an agreement for a loan. It was then submitted that directive No. 1, sought to help the Government get paid when its claim in SC 228 of 2008 has been stayed by the Supreme Court and a dispute is still pending in arbitration proceedings in London, and also when an appeal in claim 338 of 2008 is pending. That reason was also given to support the application for a stay of the appeal itself before this Appeal Board.
21. It must be noted in the first place, that as a matter of a statutory duty, the Central Bank is required to order action and issue directives under *s: 36(1) and (5) of the Banks and Financial Institutions Act*, if there are reasonable grounds. It cannot neglect or waive that duty.

22. Even if the motive harboured by the Central Bank was to cause payment of the US\$10.0 million from Venezuela and the US\$10.0 million from Taiwan to be made to the Government, the fact is that when examiners from the Central Bank went to the Belize Bank Ltd, they reported that they found the irregularities outlined in the affidavit of Mr. Campbell. On those irregularities alone they were required, as a matter of statutory duty, to issue the two directives, which were within their authority in the Act. Even an ordinary small time depositor/customer like myself understands that if an instruction is issued to a bank to pay money to a particular person or into an account, the instruction must be followed.

23. I think that the Appeal Board should restrict itself to what the outcome of the examination by the Central bank was, and the action taken by the Central Bank. The jurisdiction of the Appeal Board seems to me to be restricted to bank practices about which the Central Bank could issue directives, and other matters in the Bank and Financial Institutions Act. The Appeal Board should leave any underlying claim to mainstream courts. May be at the hearing of the appeal the Appeal Board may be persuaded otherwise.

24. Accordingly, it is my decision to refuse to stay, that is, to suspend enforcement action in regard to directive No.1, which states that: “the Belize Bank... forthwith credit GOB’s account with Central Bank of Belize with US\$10.0 million as per payment details stated in wire transfer instruction sent by Bandes Fideicomisos De Venezuela on the cash payment confirmation dated 28th December 2007...” It follows that the central Bank may straight-away enforce directive No. 1, requiring the Belize Bank Ltd., to pay the US\$10.0 million from Venezuela to the account of the Government of Belize at the Central Bank.
25. Further, I refuse to stay the hearing of the appeal of the Belize Bank filed on 23.52008. I consider it better, for the reduction of the number of litigations about the subject matter, that the Appeal Board concludes its duty under s: 70 of the Act quickly, and give way to the mainstream courts to attend to other claims. Perhaps it will help reduce the length of submissions in those courts. I also consider it not in the public interest to prolong the regulatory process started by the Central Bank over several months, and possibly years.

26. On the other hand, I grant a stay of enforcement action in regard to directive No 2, which states that: “the Belize Bank should forthwith provide to the Central Bank, written documentation regarding the authority to deposit fund to the account of UIH regarding the US\$10.0 million received from the Embassy of China (“Taiwan”). The directive is suspended until the appeal of the Belize Bank Ltd., to this Appeal Board has been decided.
27. The date of the first hearing of the appeal is 25.9.2008. It will be for considering directions as to evidence, procedure, request for cross-examination and any matter that will require attention.
28. The actual hearing will be on 2.10.2008, at 9:00am at the Supreme Court Building, Belize City.
29. Delivered this Thursday the 7th day of August, 2008.
Belize City

Chairman
Banks and Financial Institutions
Appeal Board.

In attendance: Mr. Jaime Alpuche – Member, Appeal Board.

Mr. Jeffrey Locke – Member, Appeal Board.